

raising them; I only find fault with the fact that we have taken care of them and they have not found it out yet. Before the vote tomorrow morning, I want them to find it out. I want the Senator from Minnesota and I want my friend and colleague from the State of Iowa who raised this issue to be aware of it as well.

My friend from Iowa was quoted in the Des Moines Register Sunday as saying about this bill: I am not for it. I think it's a bad bill. He talked with bankruptcy lawyers who said that it will hit hardest those who rack up big bills due to medical problems.

As to the Time magazine article that was referred to earlier by the Senator from Minnesota which alleged that medical expenses drove some of the families profiled into bankruptcy, I would just say that this is flat out wrong.

To the extent any person in bankruptcy has medical expenses, the bankruptcy bill deals with this issue in two ways.

The General Accounting Office to look at the provisions of this bill from the point of view of medical expenses. You can see from this report that came from the General Accounting Office that all medical expenses that are deducted in determining whether you have the ability to go to chapter 7 or chapter 13. The bill is very clear health care expenses are covered because of "other necessary expenses" include such expenses as charitable contributions, child care, dependent care, health care, payroll deductions, life insurance, et cetera. All of these are used in determining your ability to repay your debts.

So anybody who comes to the floor of the Senate and says that we do not take medical costs into consideration in determining this—those colleagues have not read the bill.

There is one additional thing. Somebody can make a case that this does not take care of all of the instances. I do not know how much clearer it can be. But we still have application to the bankruptcy judge, under special circumstances, to argue any case you want to of something that should be taken into consideration in your ability to repay debt. Medical expenses, obviously, fall into that category if this provision is not adequate. But I do not know how much clearer it can be than when you say medical expenses are things that are deductible in making your determination of ability to pay.

Several Senators have also, today, made reference to the issue of whether we need to modify the bankruptcy laws to prevent violent abortion protesters from discharging their debts in bankruptcy court. Now the fact is, our current law already prevents this from happening.

I am releasing today a memo to me from the nonpartisan Congressional

Research Service that says, without a doubt, no abortion protester has ever, ever gotten away with using bankruptcy as a shield. So I hope my colleagues listen to this nonpartisan source and not the partisan political statements that were made yesterday on the Senate floor in regard to this.

I want to put this in the RECORD, Mr. President, so I know that this is clearly stated. I ask unanimous consent that this memo be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,  
LIBRARY OF CONGRESS,  
Washington, DC, October 26, 2000.  
MEMORANDUM

To: Hon. Charles Grassley,  
From: Robin Jeweler, Legislative Attorney,  
American Law Division.

Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. § 523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters.

The only reported decision identified by the search is *Buffalo Gyn Womenservices, Inc. v. Behn* (In re Behn), 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. § 523(a)(6), which excepts claims for "willful and malicious" injury. The court surveyed the extent and somewhat discrepant standards for finding "willful and malicious" conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

"[W]hen a court of the United States issued an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of volition and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.'"—242 B.R. at 238.

Mr. GRASSLEY. In other words, once again, just to make it very clear the Congressional Research Service has searched every known case, and I have here, as my colleagues can read, the only case that is available, in which the result is that an abortion protester wasn't able to discharge his debts. The court was very clear that they were not able to get a discharge for that purpose.

Mr. President, I see my friend from New Jersey, who is on the other side of the aisle but very supportive of our legislation, who needs time because he supports this legislation from our side of the aisle. So I am going to quit at

this point. I ask if I can have the floor back after he has finished.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I ask unanimous consent to do that, so I can defer to the Senator from New Jersey right now.

Mr. ENZI. Reserving the right to object—

Mr. GRASSLEY. I will ask this way, that when the Senator from New Jersey has finished, to give the Senator from Wyoming the floor, and then me, because I want to continue presenting our case on the bankruptcy reform.

The PRESIDING OFFICER. Is the Senator from Iowa yielding time to the Senator from New Jersey? The Republicans control the time.

Mr. GRASSLEY. Yes. I intend to do that.

The PRESIDING OFFICER. How much time—

Mr. GRASSLEY. How much time does the Senator need?

Mr. TORRICELLI. Twelve minutes.

Mr. GRASSLEY. Twelve minutes.

The PRESIDING OFFICER. Without objection, 12 minutes are yielded to the Senator from New Jersey.

Mr. TORRICELLI. I thank the Chair.

#### BANKRUPTCY

Mr. TORRICELLI. Mr. President, for the last 4 years, my colleague, Senator GRASSLEY, has shown extraordinary patience and considerable leadership in bringing this institution towards fundamental and fair reform of the bankruptcy laws. It has not always been a popular fight, but it is unquestionably the right thing to do for consumers, for business, and perhaps most importantly, for small businesses, family-owned businesses, that are often victimized by abusers.

Everyone, I think, generally agrees, within reason, that there is a need for bankruptcy reform. The question, of course, has been how to do that. In the last Congress, we came extremely close to bipartisan reform. Having come so close in the 105th Congress, I inherited the role as the ranking member of the subcommittee with jurisdiction, and I felt some optimism that we could succeed.

Since that time, working with Senator GRASSLEY, I think we have dealt with most of the critical issues. He has been extremely cooperative. Indeed, Members on both sides of the aisle have had suggestions, changes, most of which have been incorporated. Overwhelmingly, Senators who had problems with the bill and individual changes have been accommodated in both parties.

So today we bring to the floor the culmination of 2 years of work, of refining something that had been worked on for the 2 years before that—4 years—with many Members of the institution, and overwhelmingly Members who have voted for it.

Is it perfect? No. Were I writing bankruptcy reform by myself, there would be differences. But none of us writes any bill by ourselves.

The critical question is: Is it fair and is it a balanced bill? Unequivocally, the answer to that question is yes.

Will it improve the functioning of the bankruptcy system without doing injury to vulnerable Americans who have need, legitimate need, of bankruptcy protections? Absolutely, yes.

For those reasons, this bill deserves and, indeed, clearly has overwhelming bipartisan support in the Senate.

What has fueled this broad and deep support among Democrats and Republicans in the House and the Senate have been the facts, an overwhelming misuse and expansion of bankruptcy. In 1998 alone, 1.4 million Americans sought bankruptcy protection, a 20-percent increase since 1996, during the greatest economic expansion in American history, with record employment, job growth, income growth, a 20-percent increase in bankruptcies, more staggering, since 1980, a 350-percent increase in the use of bankruptcy laws.

It is estimated that 70 percent of those filings were done in chapter 7, which provides relief from most unsecured debt. Conversely, just 30 percent of those petitions were filed under chapter 13, which requires a repayment plan.

The result of these abuses of the system has meant that just 30 percent of petitions under chapter 13 require a repayment plan. Overwhelmingly, people have discovered, contrary to the history of the act and good business practices, they can escape paying back these debts, although they have the means to do so, and escape so by simply filing under a different chapter.

This is the essence of the bill. Simply making this adjustment, moving many or some of these 182,000 people back into repayment plans, could save \$4 billion to creditors. This isn't somebody else's problem. That \$4 billion gets paid. If the bankruptcy affects a carpenter, a family owned masonry business, a home building company, it can put them out of business, or the cost gets passed on to someone else who buys the next house. If it is the mom and pop store on main street, it can put them out of business or they absorb the cost. But even if it is a major financial institution, with many credit card companies losing 4 or 5 percent of revenues to bankruptcy, it gets passed on to the next consumer.

This \$4 billion is not the problem for some massive company faraway that can afford to absorb it. It is us. We are all paying the bill. The American consumer is absorbing this money from the abuse of the bankruptcy system—often those least able to absorb it, small businesses, family owned businesses, and consumers.

This is why, with these compelling facts and the logic of this reasoning,

that the Senate passed a very similar bill by a vote of 83-14 from both parties, across philosophical lines, in an overwhelming vote. That is the bill we bring back today.

It is charged by critics of the bill that this will deny poor people the protection of the Bankruptcy Act. One, this is not true. Two, if in any way it denied poor people the protection of bankruptcy, not only would I not speak for it, not only would I not vote for it, I would be here fighting against it. The simple truth is, no American is denied access to bankruptcy under this bill.

What the legislation does do is assure that those with the ability to repay a portion of their debts do so by establishing a clear and reasonable criteria to determine repayment obligations. However, it also provides judicial discretion to ensure that no one genuinely in need of debt cancellation will be prevented from receiving a fresh start. That bears repeating. No one is denied bankruptcy protection because, ultimately, of judicial discretion. Prove you need the protection, and you can and will get it.

To do this, the bill contains a means test, virtually identical to the one passed by the Senate with 84 votes on a previous occasion. Under current law, virtually anyone who files for complete debt relief under chapter 7 receives it. Regardless of your resources, whether you can repay it or not, your obligation simply gets passed along to the small store owner, the mom and pop store, the family business. You pass on your obligation, regardless of your ability. We changed that by creating a needs-based system which establishes a presumption that chapter 7 filings should either be dismissed or converted to chapter 13 when the debtor has sufficient income to repay at least \$10,000 or 25 percent of their debt—a presumption that if you have money in the bank or you have income to repay a portion of this, you should do so. You can answer the presumption. You can overcome it. You can defeat it. But surely it is not unreasonable for someone with those means to have that burden, to prove they cannot pay the debt.

In addition to this flexible means test, the bill before us also includes two key protections for low-income debtors that were a vital part of the Senate bill previously passed. The first is an amendment offered by Senator SCHUMER to protect low-income debtors from coercive motions. This will ensure that creditors cannot strong arm poor debtors into making promises of payments they cannot afford to make. Senator SCHUMER asked for it to be in the bill. It is in the bill. It offers protection from unscrupulous, unfair, and burdensome collections.

The second is an amendment offered by Senator DURBIN. Senator Durbin, who previously held my position and drafted the bill 2 years ago in its initial

form, provided a miniscreen to reduce the burden of the means test on debtors between 100 and 150 percent median income. This is a preliminarily less intrusive look at the debts and expenses of middle-income debtors to weed out those with no ability to repay those debts and to move them more quickly to a fresh start.

It was a good addition, but the combination of Mr. SCHUMER's amendment for a safe harbor in addition to the Durbin miniscreen and other provisions, not a part of the original Senate bill, will provide real protections to low-income debtors. These include, first, a safe harbor to ensure that all debtors earning less than the State median income will have access to chapter 7 without qualifications; two, a floor to the means test to guarantee that debtors unable to repay less than \$6,000 of their debts will not be moved into chapter 13; three, additional flexibility in the means test to take into account the debtor's administrative expenses and allow additional moneys for food and clothing expenses—three protections—absolute, providing real protection for low-income families on vital necessities, on modest savings, and on means of collection.

All of this should assuage any fear that this bill will make it more difficult for those in dire straits to obtain a fresh start and reorganize their lives. Absolutely no one, because of these protections, will be denied access to complete protection in bankruptcy. But it is balanced because there is also protection for businesses and family companies.

Critics have also argued that the bill places an unfair burden on women and single-parent families. This is the most important part of this bill to understand. There is not a woman in this country, there is not a single parent, there is not someone receiving alimony, child support, or any child in America whose position is weakened because of this bill. Indeed, their position is strengthened because of this bill. Single-parent families, by elevating child support to the first position rather than its current seventh position, are in a better place because of this bill than they are if we fail to act.

Under current law, when it comes to prioritizing which debts must be paid off first, child support is seventh—after rent or storage charges, accountant fees, and tax claims. Remember this, because if you oppose this bill and if we fail to act in the bankruptcy line, accountants will be there, tax claims will be there, storage claims will be there, and women and children will be behind. Under this bill and this reform, children, women, single-parent families are where they belong—in front of everyone, including the Government.

Finally, the bill requires that a chapter 13 plan provide for full payment of

all child support payments that become due after the petition is filed. This is simply a better bill—for business and for families.

Finally, in drafting a balanced bill, Senator GRASSLEY and I were confronted with the very real need to provide some additional consumer protection. The fact is, many people don't just fall into bankruptcy. In my judgment, they are driven into bankruptcy by unscrupulous, unnecessary, and burdensome solicitations of debt by the credit industry. This had to be in the bill, and it is in the bill.

The credit card industry sends out 3.5 billion solicitations a year. That is more than 41 mailings for every American household—14 for every man, woman, and child in the Nation. It is not just the sheer volume of the solicitations; it is a question of who is targeted. Solicitations of high school and college students are at a record level. Americans with incomes below the poverty line have doubled their use of credit.

The result is not surprising, as 27 percent of families earning less than \$10,000 have consumer debt of more than 40 percent of their income. This bill deals with that reality.

With the help of Senators SCHUMER, REED, and DURBIN, we have ensured that there is good consumer protection in this bill. It is not everything I would have written, certainly not everything they would have liked, but it is good and it is better than current law.

The bill now requires lenders to prominently disclose the effects of making only a minimum payment on your account; that interest on loans secured by dwellings is tax deductible only up to the value of property, warnings when late fees will be imposed, and the date on which an introductory or teaser rate will expire and what the permanent rate will be after that time. All of these things will be required on consumer statements in the future. Few are required now.

What this means is that Senator GRASSLEY and I have done our best. We have worked with all Members of the Senate in both parties. This is a good bill and a balanced bill. The Senate has approved it before. It should do so again. It provides new consumer protection, protection for women and children, securing their place in bankruptcy lines, ensuring that debts get repaid when they can be, ensuring bankruptcy protection, and ensuring that abuses end so that small businesses are not victimized and consumers who can pay their bills do not pay the additional costs of those who choose not to.

I congratulate Senator GRASSLEY once again on an extraordinary effort. I am very proud to coauthor this bill with him. I look forward to the Senate's passage.

I yield the floor.

Mr. GRASSLEY. Mr. President, I hope we had a lot of people who were able to listen all afternoon on this debate. I doubt if very many people listened for 4 hours, but they heard a lot of charges against the bill that were partisan early on this afternoon. Then I said how this bill passed 83–14 originally. That would never have happened—that wide of a margin and bipartisan cooperation—except for the early support and continuing support, and you have seen that demonstrated in the recent speech by Senator TORRICELLI. I thank him for that.

I also thank Senator BIDEN of Delaware for also helping us get this bill out of committee and to the floor, and also Senator REID of Nevada, who helped us get through the hundreds of amendments we had filed with this legislation. So this is evidence of just three people on the other side of the aisle who have worked very hard to make this a bipartisan approach, and this legislation, as controversial as it is, would not have gotten as far as it had without that cooperation. I thank Senator TORRICELLI.

#### CONCLUSION OF MORNING BUSINESS

Mr. LOTT. Mr. President, it is my understanding that the time between now and 6 p.m. is under my control for morning business. With that in mind, I ask unanimous consent that the Chair close morning business.

The PRESIDING OFFICER. Morning business is closed.

#### NATIONAL ENERGY SECURITY ACT OF 2000—MOTION TO PROCEED—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

Motion to proceed to S. 2557, a bill to protect the energy security of the United States and decrease America's dependency on foreign oil sources to 50 percent by the Year 2010 by enhancing the use of renewable energy resources, conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies, mitigating the effect of increases in energy prices on the American consumer, including the poor and the elderly, and for other purposes.

Mr. LOTT. Mr. President, I now withdraw my motion to proceed to S. 2557.

The PRESIDING OFFICER. The Senator has that right. The motion is withdrawn.

#### ENACTMENT OF CERTAIN SMALL BUSINESS, HEALTH, TAX, AND MINIMUM WAGE PROVISIONS—CONFERENCE REPORT

Mr. LOTT. I move to proceed to the conference report containing the tax bill, H.R. 2614.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate on the bill H.R. 2614 "To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both houses.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of October 26, 2000.)

#### NATIONAL ENERGY SECURITY ACT OF 2000—MOTION TO PROCEED—Continued

Mr. LOTT. Mr. President, I now renew my motion to proceed to S. 2557. I will notify all Senators as to the exact date on which I intend to file cloture on this very important tax conference report. I note that I will not do that today. In the meantime, this action I have just taken will allow me to file that cloture motion at a later date.

#### MORNING BUSINESS

Mr. LOTT. I ask unanimous consent that the time between now and 6:30 remain in control of the majority leader for morning business, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. At the request of Senator GRASSLEY and others who wish to be heard, we are asking to extend the time from 6 until 6:30.

I believe there will be a voice vote at the conclusion of this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I yield the floor.

#### THE LEGAL IMMIGRATION FAMILY EQUITY ACT

Mr. THURMOND. Mr. President, it is highly unfortunate that the Clinton administration is apparently trying to play politics with immigration during the final days before the Presidential election.

The Congress has tried to work in good faith with the President to help immigrants who play by the rules, and have not been treated fairly by the Immigration and Naturalization Service. Unfortunately, the President does not seem to be interested in a reasonable compromise.